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November 4, 1997

Hand Delivered

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

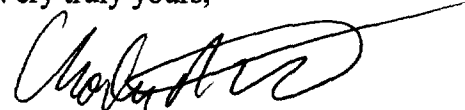
Re: MM Docket No. 97-122; File Nos. BRFT-970129YC, BRFT-970129YD

Dear Mr. Caton:

Transmitted herewith, on behalf of Gerard A. Turro, are an original and six copies of his Motion to Strike in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Charles R. Naftalin

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Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

NOV - 4 1997

In re)	
)	
GERARD A. TURRO)	MM Docket No. 97-122
)	
For Renewal of License)	File Nos. BRFT-970129YC
For FM Translator Stations)	BRFT-970129YD
W276AQ(FM), Fort Lee, NJ, and)	
W232AL(FM), Pomona, NY)	
)	
MONTICELLO MOUNTAINTOP)	
BROADCASTING, INC.)	
)	
Order to Show Cause Why the)	
Construction Permit for FM Radio)	
Station WJUX(FM), Monticello, NY,)	
Should Not Be Revoked)	

To: Honorable Arthur I. Steinberg
 Administrative Law Judge

MOTION TO STRIKE

Gerard A. Turro, by his attorneys, hereby requests that the Judge strike various unsupported and largely irrelevant representations concerning "programming" contained in the "Summary of Past Proceedings for Which Official Notice May be Taken" and in the Statement of Wilson La Follete, both of which were part of the Joint Direct Case Exhibits filed by the Mass Media Bureau ("Bureau") and Universal Broadcasting of New York, Inc. ("Universal") on October 27, 1997, in the above captioned proceeding.¹

There is no certification by the Bureau and Universal as to the accuracy, authenticity or necessity for their Summary. It appears to be unsigned and unsworn legal argument concerning

¹The "Summary" is Exhibit No. 1 and Mr. La Follette's Statement is Exhibit No. 6.

“programming” matters the relevance of which has not been established by the Bureau and Universal. This Summary consists almost entirely of self-serving characterizations of past Commission activities. Legal argument in the form of an “exhibit” is improper and unwarranted. When the opportunity for legal argument is invited by the Judge or authorized by the Commission’s Rules, then the parties are free to pursue their objectives. But such argument cannot be considered “direct evidence” and should not be accepted as such.

In addition, the Bureau and Universal have failed to make any connection between their characterizations of the “programming matters” in their Summary and the issues designated for hearing in Hearing Designation Order, Order to Show Cause and Notice for Opportunity for Hearing, FCC 97-137 (released April 18, 1997) (“HDO”). Indeed, they have ignored the Commission’s decision (HDO, note 13) where it states that a potential violation of Section 74.1232(d) will not be pursued because of Mr. Turro’s reliance on the 1991 Declaratory Ruling, which is a subject of the Summary. (Summary, p. 2) Given that this Summary is inappropriate in form and substance, and the Bureau and Universal have offered no justification for it, it should not be admitted as an exhibit to this proceeding.

Various representations of Mr. La Follette also should be stricken. Although Mr. Follette is a consulting engineer in the firm of Cohen, Dippell and Everist, P.C., a substantial amount of his Statement is directed to legal conclusions in connection with provision of programming. While we have no initial objection to Mr. Follette’s testimony concerning his own testing, observations and technical understandings, he has not been offered as an expert in programming or other legal matters concerning programming, and his opinions about them should be struck. Two examples of the kinds of assertions which should not enter the record in the form of an

exhibit are:

Promotional announcements, commercials, news broadcasts, etc., aired by W276AQ give the appearance that the translator is a full-service FM station serving Bergen County. Such broadcasting practices and full time local origination clearly fall within the prohibited practices recited in the Report and Order in MM Docket No. 88-140, FCC 90-375 regarding KBUR-AM/KGRS-FM case... (Direct Case, pp. 99-100)

...were observed by the investigators to be in flagrant violation of the FCC rules and policies and immediate action by the Commission is requested... (Direct Case, p. 100)

Mr. La Follette also opines as to the purported sufficiency or contents of materials filed with the Commission and as to the state of the Commission's records without offering any such records. Again, Mr. Follette has strayed well past the apparent bounds of his knowledge and the parties have provided no basis for his opinions.

Therefore, Mr. Turro respectfully requests that the Judge strike all assertions of legal conclusions offered by Mr. Follette and the Summary which the Bureau and Universal have attempted to import into the case as evidentiary "exhibits."

Respectfully submitted,

GERARD A. TURRO

Alan Y. Naftalin (by CRN)
By: /s/ Alan Y. Naftalin

Charles R. Naftalin
By: /s/ Charles R. Naftalin
/s/ Charles R. Naftalin

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November 4, 1997

His Attorneys

CERTIFICATE OF SERVICE


I, Barbara Frank, a secretary in the law offices of Koteen & Naftalin, L.L.P., hereby certify that true copies of the foregoing "MOTION TO STRIKE" have been served upon the following by first-class United States mail, postage prepaid, this 4th day of November 1997:

- * The Honorable Arthur I. Steinberg
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/s/ 
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